

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CAROL M. PATTERSON, a single
woman,
Plaintiff,

NO. CV-04-0458-LRS
(CONSOLIDATED)

-vs-

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
IN PART

ARAMARK MANAGEMENT SERVICES,
Limited Partnership, a foreign
corporation,
Defendant.

LENKA ANNA KIRCHNER,
Plaintiff,

-vs-

ARAMARK MANAGEMENT SERVICES,
Limited Partnership, a foreign
corporation,
Defendant.

Before the Court are the following motions: 1) Defendant's Motion For
Partial Summary Judgment (Ct. Rec. 22), filed on February 24, 2006;
2) Plaintiffs' Motion to Strike in Part Aramark's Statement of Material
Facts and Affidavit of Steve Terry (Ct. Rec. 45), filed on March 23,

1 2006; 3) Plaintiffs' Motion to Strike in Part Affidavit of Martha Bennett
2 (Ct. Rec. 67), filed April 13, 2006; 4) Defendant's Motion to Strike
3 Portions of the Affidavits of Dunn, Kirchner and Patterson (Ct. Rec. 70)
4 filed on April 19, 2006; 5) Defendant's Motion to Strike Portions of
5 Supplemental Declaration of Robert Dunn (Ct. Rec. 75), filed on April 21,
6 2006; and 6) Stipulated Motion to Continue Experts' Reports and
7 Deposition Dates (Ct. Rec. 87) filed on May 9, 2006.

8 The Court held a hearing on May 22, 2006 and thereafter, ruled on the
9 record. Robert Dunn participated on behalf of the Plaintiffs; and
10 Courtney Beaudoin and C. Matthew Andersen participated on behalf of
11 Defendant. This Order is intended to memorialize and supplement the oral
12 rulings of the Court, which are incorporated herewith.

13 BACKGROUND

14 The plaintiffs Carol Patterson and Lenka Kirchner [collectively
15 Plaintiffs] were employed by defendant ARAMARK Management Services
16 [Defendant] as housekeepers for Valley Hospital & Medical Center in
17 Spokane, Washington. Both plaintiffs were terminated on January 13, 2004
18 for the same alleged reasons and by the same decision maker. Both
19 plaintiffs' diversity cases were removed from state court to federal
20 court on December 2, 2004. Plaintiff Kirchner's case was assigned to
21 Judge Suko, CV-04-458-LRS and Plaintiff Patterson's case was assigned to
22 Judge Van Sickle, CV-04-459. Both cases were filed in the same judicial
23 district, but randomly assigned to different Judges. The parties
24 stipulated and the Court granted consolidation of these actions on
25 December 7, 2005. Ct. Rec. 18.

26 **IT IS ORDERED** that:

1 1. Defendant's Motion for Partial Summary Judgment, **Ct. Rec. 22**,
2 filed on February 24, 2006, is **GRANTED IN PART** and **DENIED IN PART**.

3 A. The age discrimination claims of both plaintiff Kirchner
4 and plaintiff Patterson pursuant to R.C.W. 49.30 et. seq. are
5 **DISMISSED**. Plaintiffs have failed to establish a prima facie case of
6 age discrimination based on the undisputed facts.

7 B. Plaintiffs' claims for violation of R.C.W. 49.32.020
8 relating to protected union activities are **DISMISSED** as being
9 duplicative of the claims for wrongful discharge in violation of
10 public policy pursuant to R.C.W. 49.32.020.

11 C. Summary judgment as to Plaintiffs' claims for wrongful
12 termination in violation of public policy pursuant to R.C.W. 49.32.020
13 is **DENIED**. The Court finds that genuine issues of material fact exist
14 as to whether Defendant's justification for termination of plaintiffs,
15 i.e., that plaintiffs took excessive breaks and falsified time cards,
16 was valid or pretextual.

17 Alternatively, defendant seeks dismissal of plaintiff
18 Patterson's claims on the grounds that Patterson should be judicially
19 estopped from raising these claims, attempting to use the bankruptcy
20 courts to her own unfair advantage. On February 17, 2004, Patterson
21 filed for Chapter 7 bankruptcy protection. She did not list this
22 wrongful discharge lawsuit as a contingent claim, though defense
23 states she had knowledge of enough facts to know that a potential
24 cause of action existed during the pendency of bankruptcy. Patterson's
25 debt was discharged as a no asset estate on May 19, 2004. After
26 defendant's summary judgment motion was filed, Patterson moved the

1 bankruptcy court to reopen the bankruptcy. It was reopened on March
2 16, 2006. Based on the current state of the factual record, the Court
3 cannot conclude as a matter of law that judicial estoppel bars the
4 claims of Patterson. Defendant's motion for summary judgment on this
5 ground is therefore **DENIED without prejudice**.

6 D. Plaintiffs' claims for breach of contract are **DISMISSED**,
7 the Court having found that no contract existed for these plaintiffs
8 in their employment-at-will relationship with defendant.

9 E. Plaintiffs' claims for negligence are **DISMISSED**.

10 F. Plaintiffs' claims for negligent infliction of emotional
11 distress are **DISMISSED**. The Court finds that Defendant did not owe
12 plaintiffs a duty to use reasonable care to avoid inadvertent
13 infliction of emotional distress when responding to a workplace
14 dispute.

15 G. Plaintiffs' claims for Consumer Protection Action
16 violation pursuant to R.C.W. 19.86 et. seq. are **DISMISSED**. Plaintiffs
17 have failed to prove the required elements set forth in *Hangman Ridge*
18 *Training Stables, Inc. V. Safeco*, 105 Wn.2d 778, 780 (1986).

19 H. Plaintiffs' claims for violation of good faith and fair
20 dealing are **DISMISSED**. The Court finds Plaintiffs were at-will
21 employees who have no legal claim for violation of the duty of good
22 faith and fair dealing.

23 I. Summary judgment as to Plaintiffs' claims for defamation
24 is **DENIED**. The Court finds that genuine issues of material fact exist
25 as to whether the plaintiffs can establish a prima facie case for this
26 cause of action.

1 J. Plaintiffs' claims for invasion of privacy/false light
2 disclosure are **DISMISSED**. Plaintiffs have failed to prove the elements
3 of this common law tort of invasion of privacy. Further, the
4 underlying "false light" relied upon arises out of an alleged
5 defamatory statement. Therefore, the Court finds the proper cause of
6 action is defamation under the facts of this case.

7 2. Plaintiffs' Motion to Strike in Part Aramark's Statement of
8 Material Facts and Affidavit of Steve Terry, **Ct. Rec. 45**, filed on
9 March 23, 2006 is **DENIED**.

10 3. Plaintiffs' Motion to Strike in Part Affidavit of Martha
11 Bennett, **Ct. Rec. 67**, filed April 13, 2006 is **DENIED**.

12 4. Defendant's Motion to Strike Portions of the Affidavits of
13 Dunn, Kirchner and Patterson, **Ct. Rec. 70**, filed on April 19, 2006 is
14 **GRANTED in part and DENIED in part**. Only admissible evidence may be
15 considered on summary judgment. Declarations and exhibits are
16 relevant to the extent they have a tendency to make the existence of
17 any material fact more or less probable. See Fed.R.Evid. 401.
18 Affidavits are admissible only if relevant and based upon personal
19 knowledge. Conclusory facts cannot be utilized on summary judgment.
20 Fed.R.Civ.P. 56(e). The Court has considered admissible evidence for
21 purposes of this summary judgment motion.

22 5. Defendant's Motion to Strike Portions of the Supplemental
23 Declaration of Robert Dunn, **Ct. Rec. 75**, filed on April 21, 2006, is
24 **GRANTED**.

25 6. Stipulated Motion to Continue Experts' Reports and Deposition
26 Dates, **Ct. Rec. 87**, filed on May 9, 2006 is **GRANTED**.

